

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555(SCC)

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5 In the Matter of:

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7 LEHMAN BROTHERS HOLDINGS INC.,

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9 Debtor.

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13 U.S. Bankruptcy Court

14 One Bowling Green

15 New York, New York

16

17 November 7, 2014

18 10:06 AM

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23 B E F O R E :

24 HON SHELLEY C. CHAPMAN

25 U.S. BANKRUPTCY JUDGE

1 Doc # 46364 Motion for Approval of Settlement Agreement
2 Among Putnam Structured Product Funding 2003-1, Ltd., Putnam
3 Structured Product Funding 2003-1 LLC, U.S. Bank National
4 Association, as Successor Trustee, Lehman Brothers Special
5 Financing, Inc., and Lehman Brothers Holdings, Inc.
6
7 Doc. #15363 Debtors' One Hundred Seventeenth Omnibus
8 Objection to Claims (No Liability Non-Debtor Employee
9 Claims)
10
11 Adversary Proceeding: 08-01420-scc Lehman Brothers, Inc.
12 Doc. #9013 Two Hundred Thirty-Seventh Omnibus Objection to
13 General Creditor Claims (Employee Claims)
14
15 Adversary Proceeding: 08-01420-scc Lehman Brothers, Inc.
16 Doc #9478 Two Hundred Fifty-First Omnibus Objection to
17 General Creditor Claims (Employee Claims)
18
19 Adversary Proceeding: 08-01420-scc Lehman Brothers, Inc.
20 Doc #10097 Trustee's Two Hundred Sixty-Seventh Omnibus
21 Objection to General Creditor Claims (Employee Claims)
22
23 Adversary Proceeding: 08-01420-scc Lehman Brothers, Inc.
24 Doc #10194 Trustee's Objection to the General Creditor Proof
25 of Claim of Robert J. Chambers (Claim No. 6107)

1 Adversary Proceeding: 08-01420-scc Lehman Brothers, Inc.
2 Doc #9601 Two Hundred Fifty-Ninth Omnibus Objection to
3 General Creditor Claims

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P R O C E E D I N G S

THE COURT: Good morning. You can have a seat.
How's everyone today?

MS. ARTHUR: Good.

THE COURT: All right. Let's see. We have a
number of folks on the phone, but I don't think I need to
identify them until we get to Mr. Santoro who is appearing
pro se with respect to one of the matters.

Okay.

MS. ARTHUR: Good morning, Your Honor. For the
record, Candace Arthur of Weil, Gotshal & Manges on behalf
of Lehman Brothers Holdings, Inc. as plan administrator.

As Your Honor will note the agenda is fairly short
today for the plan administrator, and if it's acceptable to
the Court I'll go in the order of the agenda letter --

THE COURT: Certainly.

MS. ARTHUR: -- that was filed.

THE COURT: Thank you.

MS. ARTHUR: The first motion before the Court is
an uncontest -- the uncontested motion of the plan
administrator filed pursuant to Bankruptcy Rule 9019 and
Section 105(a) seeking approval of a settlement agreement
amongst Lehman Brothers Holdings, Inc., Lehman Brothers
Special Financing, Inc., Putnam Structured Product Fundings
2003-1, Ltd., Putnam Structured Product Funding 2003-1, LLC,

1 and U.S. Bank National Association in its capacity as
2 successor trustee.

3 Your Honor, we filed a motion on September 24th
4 and delivered a copy of the confidential settlement
5 agreement on October 21st to the parties, the chambers, the
6 U.S. Trustee as well as Milbank.

7 I would also like to note for the Court that we
8 filed a declaration of Lawrence Brandman of Lehman Brothers
9 Holdings, Inc. in support of the motion and the trustee has
10 also filed an affidavit in connection with the settlement
11 agreement. Counsel for the trustee is present in the
12 courtroom today.

13 Your Honor, the settlement agreement resolves
14 another one of the SPD flip clause disputes. It resolves
15 all disputes amongst the parties and upon full receipt of
16 the settlement amount to LBSF we will, in fact, proceed to
17 dismiss the issuer, the co-issuer, collateral manager and
18 U.S. Bank from the adversary proceeding. No objections have
19 been made to the motion and the plan administrator does
20 submit that the settlement agreement is in the best interest
21 of LBSF's estate and its creditors.

22 Accordingly, unless Your Honor has any questions,
23 the plan administrator does respectfully request for the
24 motion to be granted and the settlement agreement approved.

25 THE COURT: All right. Does anyone wish to be

1 heard with respect to the motion to approve pursuant to Rule
2 9019, the Putnam settlement?

3 All right. Very good. The settlement clearly
4 falls above the lowest level of the range of reasonableness
5 and I'll enter the order approving it.

6 MS. ARTHUR: Thank you, Your Honor.

7 I will now turn the podium over to my colleague,
8 Garrett Fail, for the next matter on the agenda.

9 THE COURT: All right. Thank you very much.

10 MR. FAIL: Good morning, Your Honor. Garrett --

11 THE COURT: Good morning.

12 MR. FAIL: -- Fail, Weil, Gotshal & Manges for
13 Lehman Brothers Holdings, Inc. as the plan administrator.

14 The next item on the agenda is a hearing to
15 consider the Debtors' one hundred seventeenth omnibus
16 objection to claim 32308 filed by Mr. Vito Santoro.

17 THE COURT: All right.

18 MR. FAIL: Your Honor, the claim seeks \$657,100 --

19 THE COURT: Hold on -- hold on one moment.

20 MR. FAIL: Of course.

21 THE COURT: Just let me confirm that Mr. Santoro
22 is there and can hear us.

23 Mr. Santoro, sir, are you there?

24 MR. SANTORO: Yes, I am, Your Honor.

25 THE COURT: All right. Good morning.

1 MR. SANTORO: Good morning.

2 MR. FAIL: Your Honor, the claim seeks \$657,115
3 for "employee claims." The debtors filed their objection
4 because Mr. Santoro was not an employee of and failed to
5 state a claim against any of the Chapter 11 debtors. Mr.
6 Santoro wrote on his proof of claim, "Duplicate to LBI claim
7 of 5/27/09" and attached to the claim is an offer letter to
8 Mr. Santoro from "Lehman Brothers, Inc."

9 Mr. Santoro responded to the objection, but his
10 response does not assert a basis for liability against
11 Lehman Brothers Holdings, Inc. or any one of the Chapter 11
12 estates.

13 Your Honor, more recently in connection with his
14 claim against LBI in the SIPA proceeding, Mr. Santoro filed
15 a response which stated, "My original contract executed and
16 dated 15 January 2008 listed my employer as Lehman Brothers,
17 Inc. (LBI)." It goes on to discuss Mr. Santoro's employment
18 BY LBI from the start of his employment to the start of the
19 bankruptcy cases.

20 Your Honor, that response is part of the SIPA
21 docket at Docket 9714 and I can submit -- hand up a copy to
22 Your Honor and --

23 THE COURT: All right. Yes. Thank you.

24 MR. FAIL: Your Honor, based on the proof of claim
25 and the response, the debtors scheduled this hearing to move

1 forward to disallow and expunge this claim as it doesn't
2 state a prima facie claim against Lehman Brothers Holdings
3 Inc. or anyone of the Chapter 11 estates.

4 THE COURT: All right. Thank you.

5 Mr. Santoro --

6 MR. SANTORO: Yes, Your Honor.

7 THE COURT: -- would you like to respond to the
8 trustee's argument?

9 MR. SANTORO: I think there was some confusion on
10 my part, Your Honor, because I see two case numbers before
11 you today, 01420 in the name of Lehman Brothers, Inc. as
12 well as 13555 in the name of Lehman Brothers Holding, Inc.

13 THE COURT: Right.

14 MR. SANTORO: I -- listening to the attorney this
15 morning, I did claim in my notes that my employer was LBI,
16 and while I do believe that, you know, a holding company has
17 some responsibility for its holdings, I think in this case
18 my real pursuit is with LBI.

19 THE COURT: Okay. All right. So just to confirm
20 and clarify any lingering confusion that you have, the
21 Lehman Brothers Holdings, Inc. case is separate from the
22 Lehman Brothers, Inc. case and they are separate from all of
23 the other filed cases.

24 To the extent that you were employed by LBI, you
25 can properly assert a claim that will be considered by the

1 trustee in the LBI case. Many employees also filed claims
2 against LBHI either out of confusion or because they
3 believed that all the estates would just be considered
4 together simply generically as Lehman. But Judge Peck, who
5 presided over these cases before I took over this earlier
6 this year, made findings that there is no basis to
7 substantively consolidate the cases or to treat one
8 interchangeably than the other.

9 So your claim against LBHI will, in fact, be
10 expunged as the trustee requests and your claim asserted
11 against LBI will be dealt with in the LBI estate.

12 Does that --

13 MR. SANTORO: Thank you, Your Honor.

14 THE COURT: Does that help? All right. Thank
15 you, Mr. Santoro.

16 MR. FAIL: Thank you, Your Honor. And at this
17 point I'll turn the agenda over --

18 THE COURT: All right.

19 MR. FAIL: -- and the calendar over to --

20 THE COURT: Mr. -- Mr. Santoro --

21 MR. FAIL: -- LBI.

22 THE COURT: -- your LBI claim is part of the
23 claims that are being addressed in the status conference
24 that we're going to have later this morning, so if you would
25 like you -- you should stay on the line for that.

1 MR. SANTORO: Yes. I would like to do that, Your
2 Honor, if that's okay.

3 THE COURT: Okay. Thank you.

4 MR. FAIL: Thank you, Your Honor.

5 MR. SANTORO: Okay.

6 THE COURT: Good morning.

7 MR. FOUKAS: Good morning, Your Honor. Savvas
8 Foukas, F-O-U-K-A-S of Hughes, Hubbard & Reed for the SIPA
9 trustee. And I'm here with my colleagues, Jeff Margolin,
10 Meaghan Gragg, Karen Chau and Jordan Pace will be handling
11 the next matter on the --

12 THE COURT: Okay.

13 MR. FOUKAS: -- agenda.

14 So we're here for the status conference on the
15 objections to the claims filed by former Lehman employees
16 who were transferred to Barclays as a result of the asset
17 purchase agreement in 2008. The claims are principally for
18 2008 bonuses that the employees were allegedly guaranteed in
19 their employment contracts with Lehman. There are some
20 claims that have some other compensation elements in them,
21 but --

22 THE COURT: Right.

23 MR. FOUKAS: -- principally these are 2008 bonus
24 claims. Under the asset purchase agreement, Barclays
25 assumed the obligation to pay 2008 bonuses to transferred

1 employees. These claims seek payment from LBI.

2 At this point we have objected to all of the
3 claims. We've received responses. I think the last
4 response is due to come in in the next few days at which
5 point we'll have all the contested objections in a position
6 to move forward in a coordinated fashion.

7 THE COURT: Okay.

8 MR. FOUKAS: Over the past several months we have
9 been in communication with the claimants and received some
10 information relating to the claims from the claimants.
11 We've also received some information from Barclays. But at
12 this point the trustee does require further factual
13 information to determine the appropriate procedural path for
14 the claims. In particular, we need to know whether each
15 claimant was paid by Barclays, if they were paid how much
16 they were paid, and if they were not paid what they were
17 owed and why not.

18 So we've requested that information and some other
19 information from the claimants and we've also reached out to
20 Barclays. And the trustee --

21 THE COURT: Is there residual liability at Lehman
22 if Barclays failed to pay?

23 MR. FOUKAS: I think at this point we can't say.
24 I think it depends, Your Honor, on what we find out. Why
25 weren't they paid; did Barclays have a reason. So at this

1 point I -- you know, we really do need the information to
2 determine the best way forward.

3 THE COURT: Okay.

4 MR. FOUKAS: So the way --

5 THE COURT: So you -- have you had conversations
6 with Mr. Baumstein?

7 MR. FOUKAS: We have had conversations with Mr.
8 Baumstein and I know he has provided the information for his
9 client and I think there is some additional information that
10 we're looking for. And I'm confident we'll get it and I
11 know we have reached out as well to each of the other
12 claimants --

13 THE COURT: Okay.

14 MR. FOUKAS: -- seeking similar information.

15 And so I guess what we see as the appropriate way
16 forward here is over the next few weeks to receive this
17 information from the claimants and from Barclays, and at
18 that point we'll be able to figure out which claims involve
19 claims for people who have actually been paid, which don't
20 and why not, and at that point be able to move each category
21 forward in the appropriate fashion after discussion with the
22 claimants.

23 THE COURT: So you will -- you'll bucket them into
24 those that can go down the path of a sufficiency hearing and
25 those that have to have something a little more complex?

1 MR. FOUKAS: I think that's right. I think it may
2 be merits hearings for all the buckets or some kind of
3 mediation process for others.

4 THE COURT: Okay.

5 MR. FOUKAS: But, yeah, I think it really will
6 depend on the information we get because, you know, at this
7 point I think it's hard for us to say --

8 THE COURT: Okay.

9 MR. FOUKAS: -- now --

10 THE COURT: The most recent back and forth I have
11 on this are the letters that were exchanged between Hughes,
12 Hubbard and White & Case early in October. So is there
13 anything more that any of the claimants would like to say
14 this morning?

15 MR. FOUKAS: I think there probably is. Yes.

16 THE COURT: Okay. Thank you.

17 MR. MARK: Your Honor, David Mark --

18 THE COURT: Good morning.

19 MR. MARK: -- Kasowitz, Benson, Torres & Friedman
20 representing a number of the former employees.

21 The only objection made against the claims of my
22 clients is that Barclays assumed their obligation and that
23 somehow discharged LBI from its contract. It's a purely
24 legal issue. There are no fact issues relating to that. I
25 think the Court can decide that issue purely on the papers

1 that have been submitted. That includes the Barclays
2 contract and whatever else the trustee has submitted that
3 supports that as well as our objections.

4 We believe there's absolutely no merit whatsoever
5 to this argument, but it does present a purely legal issue.
6 There is no reason to have an extensive proceeding. There's
7 no reason for discovery to address --

8 THE COURT: So you need to --

9 MR. MARK: -- this issue.

10 THE COURT: -- be armed with that in order to get
11 Barclays to pay?

12 MR. MARK: Yeah.

13 THE COURT: Is that the bottom line?

14 MR. MARK: The bottom line is whether or not
15 somehow the debtor has been -- was discharged as a result of
16 the asset purchase agreement with Barclays. The debtor did
17 not assume the agreements, did not assign them under Section
18 365. We simply don't see that there's any plausible basis
19 for this argument, but it is a legal argument. And if the
20 Court rejects that argument, our -- my clients' claims
21 should be allowed because there's -- that's the only
22 objection that the trustee has filed.

23 So we don't see any reason why there should be any
24 extensive delay --

25 THE COURT: So you -- none of your clients has

1 been paid by Barclays?

2 MR. MARK: Some of my clients have entered into --
3 what happened, basically, is that Barclays assumed --
4 Barclays hired these people and in three of the cases
5 Barclays immediately terminated them. They didn't -- in
6 other words, they didn't keep them. They didn't enter into
7 a separate employment agreement with them. They made --
8 they paid some termination -- severance payments to them,
9 but did not hire them.

10 But they did not -- certainly, Barclays did not
11 assume their agreement with Lehman in none of these cases.
12 And there is -- and the trustee has submitted no evidence
13 whatsoever that there was any such assumption and it's
14 simply is not the fact. And if the trustee wants -- you
15 know, we can certainly provide the trustee with the support
16 that Barclays did not assume any of these people's
17 agreement.

18 I presume the trustee has obtained this
19 information from Barclays as well. We don't -- obviously,
20 we do not know what the -- Barclays has told the trustee
21 because the trustee has not given us that information. But
22 there is nothing in the record that would suggest that
23 Barclays assumed the agreements that my clients had with
24 Lehman.

25 THE COURT: Okay. All right. Let me hear from

1 some of the other counsel.

2 Good morning.

3 MR. BAUMSTEIN: Good morning, Your Honor. Doug
4 Baumstein from White & Case on behalf of 1EE, LLC.

5 THE COURT: Are you in a similar -- are your
6 clients in a similar situation?

7 MR. BAUMSTEIN: No. They're -- well, they're --
8 yes and no. I think with respect to the 237th omnibus
9 objection that is a purely legal argument. We think that
10 legal argument has no merit. It can be resolved. There are
11 some factual issues around it -- around whether he's even a
12 transferred employee, as that term is defined. There's also
13 perhaps some issues, I don't know, about calculation.

14 As Hughes Hubbard has already recognized in
15 conversations we've had, they have all the information they
16 need from us to evaluate the claim. And my concern here is
17 we're talking now about, well, we're trying to find a
18 procedural path forward.

19 From our point of view, in August we said we're
20 ready to sit down and talk to you either through a mediator
21 or directly. They said, no. We need you to respond. Now
22 we're in a position where they're saying, well, we would
23 like to take some time to evaluate, but they haven't said
24 what information will cause them to either want to talk
25 about settlement, to proceed with a sufficiency hearing or

1 otherwise.

2 So my concern here is that we're essentially
3 caught in a position where we're at their mercy on a timing
4 issue. And I just want to make sure that we have various
5 either -- either status conferences or, more accurately --

6 THE COURT: Well, we need to -- we need to set
7 some dates and deadlines because enough time has passed.

8 MR. BAUMSTEIN: I -- Your Honor, that's exactly my
9 point. We --

10 THE COURT: You know, and the trustee's letter
11 states, among other things, the trustee agrees with the
12 claimants that the omnibus objections should be heard by the
13 Court in a prompt matter.

14 So we have to set dates. So you're all here.
15 There may be some other counsel who are here. So let's just
16 set some dates. I mean, it just can't continue to roll
17 forward until the trustee collects every last bit of
18 information.

19 I mean, the risk is that in some aspects a ruling
20 on the legal issue might be something of an advisory opinion
21 to the extent that somebody got terminated or doesn't
22 properly belong in the group. But I think to hold
23 everything up for that possibility would be the tail wagging
24 the dog.

25 So is the trustee prepared to give us an out --

1 give us an outside date for a plan being rolled out, either
2 -- either if we're going to skip a sufficiency hearing and
3 just go to a merits hearing; either we're going to have a --
4 whether -- I don't care whether you call it a sufficiency
5 hearing or a merits hearing on the purely legal issue,
6 putting to one side other factual issues that may impact the
7 applicability of any ruling that comes out of that to
8 individual employees. But we should set a date.

9 MR. FOUKAS: I guess I just want to say, I mean,
10 the purely legal issue, it really is intertwined with the
11 question of did these people get paid by Barclays. The
12 assumption here was the obligation to pay bonuses. If
13 Barclays paid those bonuses, then there's really nothing
14 that the trustee has any liability for.

15 Now I've heard for the first time, I guess, that
16 Mr. Mark's clients got some kind of payments. We just need
17 to know what those are and if --

18 THE COURT: Okay. But what's holding up getting
19 that information?

20 MR. FOUKAS: I'm not sure, Your Honor. At this
21 point I -- we've asked for it. It shouldn't be --

22 THE COURT: I have --

23 MR. FOUKAS: -- that hard.

24 THE COURT: I have too many of you standing. So
25 two of you --

1 MR. MARK: The answer is we only requested that --
2 they only requested information from us two days ago. I've
3 been talking to --

4 MR. FOUKAS: Well --

5 THE COURT: Okay.

6 MR. MARK: -- the SIPA trustee --

7 THE COURT: Okay.

8 MR. MARK: -- for a year and a half about my
9 claims.

10 THE COURT: All right.

11 MR. MARK: It took them until two days ago to
12 actually ask for that information.

13 THE COURT: Okay. So he asked the question and so
14 we're going to have a deadline for finding that out.

15 MR. FOUKAS: I think if we can get the information
16 -- we've asked for the information to come in in the next
17 couple of weeks. It shouldn't really take that long to find
18 out how much someone was paid. When we get that
19 information, I think we should be in a position to talk to
20 the claimants as to which way we go forward, whether it is
21 to a merits hearing with respect to certain of them or
22 whether it is to a resolution or mediation process with
23 others.

24 But I don't think talking about this is a pure
25 legal issue really we can do that without the facts of were

1 these people fully paid because that's a really different
2 legal issue than if they were not. And so I -- you
3 mentioned an advisory opinion. I really think it would be
4 in the absence of just the real basic information of --

5 THE COURT: Well, there's two ways that -- there's
6 two reasons why Barclays would have paid them: (a) because,
7 as the trustee suggests, there was some kind of an
8 obligation to pay them or (b) Barclays independently hired
9 them and decided to pay them, right?

10 So it gets more complicated and more interesting
11 because if they did get paid something by Barclays, it
12 doesn't necessarily -- and I haven't dug a deeply into this.
13 It doesn't necessarily preclude the argument that Lehman
14 might still be responsible for additional monies. I don't
15 know.

16 MR. FOUKAS: I --

17 THE COURT: I don't know.

18 MR. FOUKAS: -- think it's probably, in these
19 circumstances, probably would given the transaction and the
20 claimants we're talking about. But I understand others may
21 feel differently about that.

22 But, again, that's a very different issue than
23 someone who received nothing from Barclays.

24 THE COURT: Well, then, let's set a date and we're
25 getting into the holiday season. I appreciate that. And I

1 have a lot of calendar issues, but let's set a date for, you
2 know, a fish or cut bait date that at that point you have to
3 indicate which way you want to go with respect to every
4 claimant. Any information that you've asked for presumably
5 would be provided by then. It's not complicated. And then
6 we'll either set a -- we'll set a hearing on the legal issue
7 if the parties haven't otherwise agreed to go down the
8 mediation path or otherwise.

9 So these guys would like to do this on Monday.
10 I'm not going to do that. But you want to look at some kind
11 of a date in December?

12 MR. FOUKAS: Yeah. Well, I guess it would be best
13 for the information if we can get it, you know, either
14 December or January for a status conference, I think, would
15 make sense, Your Honor.

16 THE COURT: Okay. Hold on. One more person needs
17 to be heard, so why don't you folks have a seat for a moment
18 and let me hear from this gentleman?

19 Good morning.

20 MR. FRYLICK: Good morning. Thank you, Your
21 Honor. My name is Rob Frylick of Ruttenberg and Rich (ph).
22 We represent claimant Okshai Murthay (ph) who is in a
23 similar situation, I think, to a lot of the other employees
24 that are here.

25 My only concern is that when we're setting a date,

1 people like Mr. Murthy who are single employees don't
2 necessarily have the same records that perhaps Barclays
3 would. We listed in our claim what Mr. Murthy received from
4 Barclays when he transferred over. He was very shortly
5 after being transferred terminated and was not paid his
6 payment bonus under his employment agreement.

7 And so having listed it in the claim, we then
8 received from the trustee requests for further information.
9 I'm not sure what more we can really provide other than a
10 statement of what we were paid. We don't have other records
11 and I think the trustee is looking for, I'm not sure exactly
12 what to prove what we received. This was, I would say six
13 years ago now. So people like Mr. Murthy aren't going to
14 necessarily have beyond just their statements in their
15 claims what they received.

16 THE COURT: Right. So they -- they have a tax
17 return or a 1099 or a W-2 or something along those lines.

18 MR. FRYLICK: Okay. But as the trustee indicated,
19 though, there's significant other information they might be
20 looking for and they may be looking to Barclays to get it.
21 And I don't know how responsive Barclays is going to be --

22 THE COURT: Well --

23 MR. FRYLICK: -- within the December deadline to
24 provide that information.

25 THE COURT: Well, in your situation, though,

1 you're saying that you -- you have provided the information
2 about what Barclays paid. And I would be surprised if
3 Barclays doesn't have the information. But if there's
4 nothing more that they get, then we're done with that and
5 we're going to move forward based on the information that
6 you provided.

7 MR. FRYLICK: Okay.

8 THE COURT: So, I mean, you can't produce
9 something that you don't have.

10 MR. FRYLICK: Correct, Your Honor.

11 THE COURT: Right. So --

12 MR. FRYLICK: Thank you.

13 Okay. Thank you, Your Honor.

14 THE COURT: Okay. Thank you.

15 MR. MARK: David Mark. And I just want to --

16 THE COURT: Yeah.

17 MR. MARK: -- emphasize the point that there's a
18 -- the objection raises only one legal argument which is
19 that the debtor has been fully discharged because Barclays
20 assumed the agreement. That's an issue of law. There are
21 no facts that (indiscernible) into that decision.

22 Whether -- now whether or not any payments that my
23 clients received from Barclays based on some other agreement
24 they had with Barclays would in any way act as a set-off
25 against their rights under the Lehman contract is, again,

1 also an issue of law.

2 THE COURT: But if your clients were issued a
3 check with a cover letter that says, dear employee, enclosed
4 is your bonus payment pursuant to our obligation to pay
5 bonuses that were due and payable to Lehman employees which
6 we assumed under X contract, that would be pretty
7 dispositive.

8 MR. MARK: I think that would be -- that would
9 certainly be relevant to the issue.

10 THE COURT: Right. So there are -- there are
11 hypothetical fact issues that could be involved. But --

12 MR. MARK: I --

13 THE COURT: -- I'm trying to give you what you
14 want.

15 MR. MARK: It's purely hypothetical, I agree. And
16 that's all I'm saying. I think whatever factual issues
17 there are can be resolved rather quickly. And all I'm
18 saying is that we should get a fairly prompt hearing on the
19 legal issues.

20 THE COURT: And that's what I'm trying -- that's
21 what I'm trying to give you.

22 So subject to, you know, folks' holiday plans, I
23 can give you a hearing date the first week of January.

24 MR. FOUKAS: That's fine with us, Your Honor.
25 That's fine, Your Honor.

1 (Pause)

2 THE COURT: I'm being overruled.

3 (Laughter)

4 THE COURT: There's a Lehman omnibus day on
5 January 15th and because of the volume of matters that are
6 coming on on the 15th, apparently we're doing an extra day
7 on the 16th. So one of two -- those two days would be
8 preferable.

9 But let me clarify a little bit what I'm thinking
10 about. I'm thinking that on that date I'm going to have a
11 hearing on the merits of something, not just another status
12 conference.

13 MR. FOUKAS: I guess I would suggest that we do it
14 as a status conference, Your Honor, and the reason I do
15 that, Your Honor, is because as Your Honor has identified
16 and I think as we've talked through, there are really
17 relevant factual issues to this --

18 THE COURT: Then I'm --

19 MR. FOUKAS: -- legal question.

20 THE COURT: Then I'll have back you for a status
21 conference in December. I'm not -- I'm not going to go out
22 two months for another status conference that's going to
23 lead to a request to go out another two months on mediations
24 and motions. That's just an inordinate amount of time.

25 So then today is November 7th. I have a Lehman

1 day on December 10th. So why don't you come back on the
2 December 10th calendar for a further status conference and
3 to agree on a definitive plan to get to dispositive motions
4 as -- as applicable.

5 MR. FOUKAS: That's fine. Thank you.

6 THE COURT: All right. December 10th at 10:00.

7 MR. MARK: All right. Thank you, Your Honor.

8 MR. FOUKAS: Thank you.

9 THE COURT: Okay. Thank you very much.

10 If in the meantime you arrive at a game plan, let
11 us know and we can do something else. All right.

12 MR. FOUKAS: Thank you.

13 THE COURT: Thank you.

14 (Pause)

15 THE COURT: Good morning.

16 MR. PACE: Good morning, Your Honor. Jordan Pace
17 of Hughes, Hubbard & Reed for the SIPA trustee.

18 The last item on the agenda is one contested
19 matter. It's a single claim on the trustee's two hundred
20 and fifty-ninth omnibus objection.

21 THE COURT: Hold on.

22 Folks, if you don't mind. Thank you.

23 MR. PACE: We're here for a sufficiency hearing on
24 the claim filed by Atif Khan through his broker, GLG
25 Partners. That's Claim Number 3036 and it seeks three and a

1 half million dollars.

2 The amount claimed is the alleged decrease in the
3 value of Mr. Khan's securities in his LBI account from the
4 end of August 2008, so about three weeks before our filing
5 date, through November 30th of 2008, so more than two months
6 after the filing date.

7 Conceptually we can think of this claim in two
8 parts: What happened before the filing date and what
9 happened after the filing date. And what happened before
10 the filing date, from LBI's perspective, is nothing. There
11 are no allegations that anyone, Mr. Khan or his brokers at
12 GLG ever contacted anyone at LBI prior to the filing date.

13 The claim shows that the first contact was on
14 September 20th, the day after the filing date. And it's
15 also clear from the allegations that there was no trade
16 ticket. There is no sale order that was communicated to LBI
17 prior to the filing date. That's what distinguishes Mr.
18 Khan's claim from all of the cases that he cites where there
19 was some breach of contract liability based on an accepted
20 or standing sale order that the broker dealer was actually
21 aware of.

22 So the second part is what happened after the
23 filing date. And in the larger context, what happened after
24 the filing date to Mr. Khan and over 100,000 other customers
25 of LBI is that they had a temporary inability to trade in

1 their accounts while the trustee, pursuant to SIPA and his
2 duties under SIPA completed the bulk transfer of accounts to
3 Barclays and to Neuberger Vermin.

4 As I mentioned, this affected over 100,000 account
5 holders and it was a transfer of, I believe it's over \$92
6 billion in customer assets. This was the largest and most
7 successful use of SIPA's transfer provision in the four
8 decades of SIPA and it was approved by Judge Peck.

9 And once those assets are transferred to Barclays
10 they're out of the estate. They're out of the trustee's
11 hands. And what the law says is that claimants like Mr.
12 Khan cannot recover for post-filing date market losses
13 either as a customer or as a general creditor claim.

14 So we are requesting that Your Honor disallow and
15 expunge the claim.

16 THE COURT: Okay.

17 MR. PACE: I'm happy to answer any questions.

18 THE COURT: Thank you.

19 (Pause)

20 THE COURT: Good morning.

21 MS. MCLOUGHLIN: Good morning, Your Honor.

22 Meaghan McLoughlin, counsel to Mr. Khan.

23 Contrary to the trustee's position we believe that
24 Mr. Khan did try to attempt trades before the filing date.
25 In his proof of claim that he submitted there are two trade

1 forms, one dated September 17th, one dated September 19th
2 which he tried to trade for 100,000 shares and 50,000
3 shares, and he was told for both that he was unable to
4 conduct any trades.

5 THE COURT: Okay. Why don't we look at those?

6 MS. MCLOUGHLIN: Sure.

7 (Pause)

8 MS. MCLOUGHLIN: In the trustee's numbered version
9 it's page 22 and --

10 THE COURT: Are you talking about these --

11 MS. MCLOUGHLIN: -- 23.

12 THE COURT: -- two from Compliance London GLG
13 Partners?

14 MS. MCLOUGHLIN: Yes. Mr. Khan worked for GLG,
15 but GLG also managed his account --

16 THE COURT: Okay.

17 MS. MCLOUGHLIN: -- at LBI and he -- he was 00 he
18 conducted -- the way it was handled in the ordinary course
19 is that he would direct his trades at GLG who would then
20 contact Lehman, but he could --

21 THE COURT: Okay.

22 MS. MCLOUGHLIN: -- also trade himself.

23 THE COURT: Okay.

24 MS. MCLOUGHLIN: And I believe for these --

25 THE COURT: The law -- the law requires that in

1 order for there to be a recovery of an unsecured claim there
2 needs to be a trade that was placed that was not executed.
3 And it's unclear to me what these documents are, but there's
4 nothing on the face of them that evidences a communication
5 to LBI, let alone a generation of a trade by LBI.

6 The cases that you cite all involve unexecuted
7 trades that were actually placed. And that's where we have
8 a disagreement.

9 MS. MCLOUGHLIN: I -- I understand what you are
10 saying. What we believe is that he did try to place these
11 trades and there are several emails from the 17th of
12 September stating that he tried to place trades, but was
13 unable to do so because there's nowhere to book it.

14 THE COURT: But you -- and where are the emails?

15 MS. MCLOUGHLIN: Let me get the page.

16 (Pause)

17 MS. MCLOUGHLIN: It should be --

18 THE COURT: There are --

19 MS. MCLOUGHLIN: -- page 6 of the trustee's --
20 page 6 at the bottom.

21 THE COURT: Page 6 of?

22 MS. MCLOUGHLIN: The proof of claim that the
23 trustee submitted has numbered pages at the bottom. It's
24 page 6 of that.

25 THE COURT: Okay. And you're talking about from

1 Atif Khan to Christian Roy, "Tried to do a trade today and
2 was told I can't because there's nowhere to book it. What's
3 the status of it?" That's the basis of it?

4 MS. MCLOUGHLIN: Yes.

5 THE COURT: Okay. So you still have to take me
6 back to the law which is that it's -- you don't get a claim
7 if you tried to book a trade. You get a claim if you booked
8 a trade that was not executed. There's --

9 MS. MCLOUGHLIN: Well --

10 THE COURT: There's no support in the law for a
11 claim based on a trade that somebody tried to book.

12 MS. MCLOUGHLIN: We believe -- I under -- we
13 understand the law and I understand the trustee's position.
14 What Mr. Khan believes is that he is entitled to this claim,
15 but at the least he would like some discovery as to where
16 these communications went, if there were any records to LBI
17 within those three days and what happened with these trade
18 forms that were rejected.

19 THE COURT: But if -- under the law that's
20 irrelevant if the only basis for allowing a claim is that
21 there have been a actual trade that was booked that was not
22 executed, then I think it's irrelevant as a matter of law
23 that an attempt was made to book a trade. And this -- who
24 is Mr. Roy?

25 MS. MCLOUGHLIN: He is an employee at GLG. He is

1 one of the employees that Mr. Khan would book trades
2 through.

3 THE COURT: Do you want to show me -- point to any
4 of the cases that you cited that would support the position
5 that there's a claim even though -- even in the absence of a
6 trade having been booked?

7 MS. MCLOUGHLIN: I think in the -- I'm looking at
8 the trustee's reply on page 4 towards the bottom.

9 THE COURT: Yes.

10 MS. MCLOUGHLIN: In the AR Barron case, there the
11 debtor failed to execute the trade as instructed.

12 (Pause)

13 THE COURT: But, again, that speaks to their
14 having actually been the placement of a trade. I instruct
15 you to sell a hundred shares of General Motors, and there's
16 no evidence that's been presented that there was any such
17 instruction.

18 The other cases are -- for example, Artford versus
19 Miller denying customer status and holding the claimant had
20 a general unsecured claim where the broker failed to execute
21 a sale order. So you have not tendered a sale order. If
22 there were a sale order, there would be a claim. Without a
23 sale order, with respect to the prepetition, there's no
24 claim.

25 MS. MCLOUGHLIN: I understand your position and we

1 believe -- we would like discovery on this, if possible.

2 THE COURT: Okay. Let me hear from the trustee
3 with respect to that last point, and then we need to talk
4 about the post-petition period. All right.

5 MS. MCLOUGHLIN: Sure.

6 THE COURT: So should there be discovery?

7 MR. PACE: Your Honor, just to address a related
8 point that feeds into that.

9 In paragraph 5 of Mr. Khan's declaration attached
10 to their response he says specifically, "I attempted to
11 execute and settle the trades at LBI through my liaison, GLG
12 Partners." So there's some I would say suggestion that
13 maybe possibly he might have gone outside of GLG. That's
14 contradicted by the allegations and all of the evidence.

15 And that feeds into the discovery point because
16 it's particularly within Mr. Khan's power as an employee or
17 partner -- I'm not really sure which -- but affiliated with
18 GLG Partners that if GLG had taken his request or his GLG
19 tickets, which is what Ms. McLoughlin pointed to, and sent
20 that over to LBI, that's in the possession of GLG. All of
21 this stuff is in the possession of GLG.

22 But as Your Honor mentioned, this is all
23 irrelevant because the cases say without that ticket,
24 without some clear instruction there is no claim whatsoever.

25 THE COURT: Okay. All right. Let's talk about

1 the post-petition. I think the trustee has correctly
2 summarized the law with respect to what happens once SIPA
3 steps in. Is there anything you wanted to say with respect
4 to that?

5 MS. MCLOUGHLIN: With respect to that we -- Mr.
6 Khan feels that he -- he has no idea what happened to his
7 account from the filing date through at least -- for the
8 next three months he was unable to access his account, which
9 I know the trustee's counsel has said happened to many, many
10 other --

11 THE COURT: Sure.

12 MS. MCLOUGHLIN: -- other claimants and we
13 understand that. But what we're really focusing on today is
14 his prepetition activities because I understand the law on
15 the transfer.

16 THE COURT: On the transfer, on the --

17 MS. MCLOUGHLIN: Yes.

18 THE COURT: -- post-petition. So there is no
19 claim for the decline in value of the securities after SIPA
20 --

21 MS. MCLOUGHLIN: We --

22 THE COURT: -- took over?

23 MS. MCLOUGHLIN: He still believes he has a claim
24 for the period of time that he has no idea what happened to
25 his money, but I understand the law is --

1 THE COURT: Okay. But in the absence of some sort
2 of an argument of malfeasance, which I don't read him to be
3 making, he's simply complaining that the securities declined
4 in value. There was a delay, et cetera.

5 But he has been fully paid the whatever was in his
6 account, I assume, as of --

7 MS. MCLOUGHLIN: That I'm not sure of.

8 THE COURT: -- whatever.

9 MR. PACE: Your Honor --

10 THE COURT: Did he have a balance in his account?

11 MR. PACE: Well, there's no claim that Mr. Khan
12 did not receive his full filing date equity.

13 THE COURT: Say that again.

14 MR. PACE: There's no claim that Mr. Khan didn't
15 receive his full --

16 THE COURT: Right.

17 MR. PACE: -- filing date --

18 THE COURT: So you're saying that in the negative,
19 but I'm saying it in the positive. Everything to which he
20 was entitled on his customer claim he received.

21 MS. MCLOUGHLIN: That I'm not sure of, but he --
22 it's not something that is at issue today. We're not
23 disputing that.

24 THE COURT: Okay. Well, it was -- it was put at
25 issue in the papers and that's why we're talking about it.

1 So let's be clear that there is no claim -- there is no
2 additional claim with respect to whatever was in his account
3 after SIPA took over.

4 MS. MCLOUGHLIN: I don't -- I don't think we're
5 saying that exactly.

6 THE COURT: Okay. Well, I need to understand what
7 you are saying exactly because it seems to be a little bit
8 contradictory. The trustee's position with which I agree is
9 that there is no basis for a claim under SIPA or the
10 Bankruptcy Code; that all of the assets and the securities
11 in the accounts valued as of September 29th, 2008 have been
12 received and, therefore, the trustee has satisfied the
13 claims under SIPA Section 78(fff)(2)(f). So there is no
14 additional claim either for decline in value or for any lack
15 of information or access that might have been associated
16 with that period of time.

17 MS. MCLOUGHLIN: No. He's seeking a claim as a
18 general unsecured for his --

19 THE COURT: Okay. Well, that's going to be
20 overruled and denied.

21 MS. MCLOUGHLIN: Thank you, Your Honor.

22 THE COURT: Okay. And with respect to the
23 prepetition account, I think the trustee has made a
24 convincing case that the claimant himself who transacted
25 business through GLG did not contact anyone prior to LBI and

1 indeed his own sworn statement bears that out. The account
2 was transferred to Barclays as part of the bulk transfer,
3 and in the absence of any evidence where there does -- which
4 there does not appear to be that there was an actual order
5 that was placed with LBI prior to the filing date, there is
6 no basis in the law to afford him a contract claim or an
7 unsecured claim.

8 I thank you for your arguments. Thank you for
9 coming down. And I would ask that the trustee prepare an
10 order and share it with counsel and submit it to chambers.

11 MR. PACE: Sure.

12 THE COURT: All right.

13 MS. MCLOUGHLIN: Thank you, Your Honor.

14 THE COURT: Thank you very much.

15 I think that that concludes the agenda --

16 MR. PACE: It does, Your Honor.

17 THE COURT: -- for today.

18 MR. PACE: Yes.

19 THE COURT: All right. Thank you very much. Have
20 a lovely weekend.

21 MR. PACE: You, too.

22 (Whereupon, these proceedings concluded at 10:49 a.m.)
23
24
25

I N D E X

RULINGS

DESCRIPTION	PAGE	LINE
Doc # 46364 Motion for Approval of Settlement Agreement Among Putnam Structured Product Funding 2003-1, Ltd., Putnam Structured Product Funding 2003-1 LLC, U.S. Bank National Association, as Successor Trustee, Lehman Brothers Special Financing, Inc., and Lehman Brothers Holdings, Inc.	9	3
Doc. #15363 Debtors' One Hundred Seventeenth Omnibus Objection to Claims (No Liability Non-Debtor Employee Claims)	12	9
Adversary Proceeding: 08-01420-scc Lehman Brothers, Inc. Doc #9601 Two Hundred Fifty-Ninth Omnibus Objection to General Creditor Claims	39	19

C E R T I F I C A T I O N

I, Sherri L. Breach, certify that the foregoing transcript
is a true and accurate record of the proceedings.

Sherri L
Breach

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